

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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PATRICIA D. DUMOND,

Plaintiff,

-v.-

6:03-CV-1448  
(LEK/RFT)

JO ANNE B. BARNHART,

Commissioner of Social Security,

Defendant.

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**DECISION AND ORDER**

Currently before the Court is a Motion for reconsideration filed by Plaintiff Patricia D. Dumond (“Plaintiff”). Motion (Dkt. No. 7). Plaintiff filed for disability insurance and supplemental security income benefits on May 20, 2002. Plntf’s Mem. of Law (Dkt. No. 7, Attach. 1) at 2. After being denied, Plaintiff went through the administrative appeal process and received the final determination of the Commissioner of Social Security on October 9, 2003. Id. Plaintiff then filed a complaint in this Court, alleging that the Administrative Law Judge’s determination was not based on substantial evidence and is based upon clear error of law. Id.

This Court dismissed Plaintiff’s Complaint on July 1, 2005, after Plaintiff did not attend a dismissal calendar call. Order (Dkt. No. 5). Plaintiff claims that she inadvertently missed the above court date, due to an intra-office scheduling mishap, and seeks reconsideration of the Order dismissing her Complaint. Motion (Dkt. No. 7).

Plaintiff emphasizes that Defendant has failed to answer Plaintiff’s Complaint or provide the administrative transcript, while Plaintiff has diligently prosecuted her claim. Motion (Dkt. No. 7) at

6-7. The docket supports this allegation; Defendant did not respond to the Complaint and Summons by the deadline of February 2, 2004, or afterwards. Plaintiff has filed proof of service of the original Complaint and this Motion for Reconsideration. Proofs of Service (Dkt. No. 2; Dkt. No. 7, Attach. 4). Additionally, Plaintiff's affidavit states that Plaintiff's counsel contacted Defendant on four (4) separate occasions to inquire why Defendant had not responded to the Complaint. Affidavit (Dkt. No. 7, Attach. 2) at ¶ 6.

Given the circumstances of this case, in which Defendant failed to meet its burden to file an answer and the Administrative Transcript and ignored this case for almost two years prior to dismissal, this Court determines that dismissal in Defendant's favor is not justified and Plaintiff's claim must be reinstated.

Based on the foregoing discussion, it is hereby

**ORDERED**, that Plaintiff's Motion for reconsideration of dismissal is GRANTED; and it is further

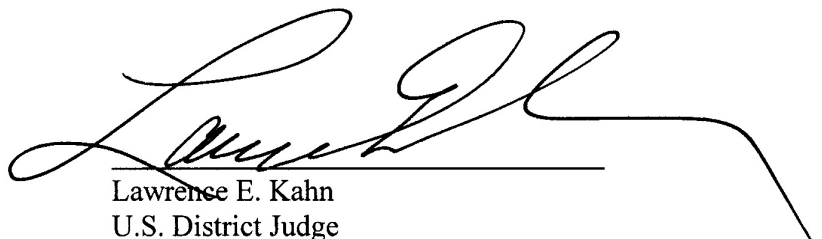
**ORDERED**, that Plaintiff's claim be REINSTATED; and it is further

**ORDERED**, that Defendants are ORDERED to file an answer to Plaintiff's Complaint within 30 days or face summary judgment; and it is further

**ORDERED**, that the Clerk serve a copy of this Order on all parties.

**IT IS SO ORDERED.**

DATED: July 24, 2007  
Albany, New York

  
Lawrence E. Kahn  
U.S. District Judge